

GONZALEZ SAGGIO & HARLAN, LLP

Nancy L. Allf, Bar No. 0128

nancy_allf@gshllp.com

411 E. Bonneville Avenue, Suite 100

Las Vegas, NV 89101

Telephone: (702) 366-1866

Facsimile: (702) 366-1945

ADORNO & YOSS LLP

Steven Gerber

sgerber@adorno.com

155 Willowbrook Boulevard, Suite 300

Wayne, New Jersey 07470-7038

Telephone: (973) 256-9000

Facsimile: (973) 256-9001

ADORNO YOSS ALVARDO & SMITH

John M. Sorich

jsorich@adorno.com

1 MacArthur Place, Suite 200

Santa Ana, CA 92707

Telephone: (714) 852-6813

Facsimile: (714) 852-6899

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

TIBAROM NV, INC., a Nevada corporation; CONSOLIDATED NEVADA CORPORATION, a Nevada corporation; TIBAROM HOLDCO, LLC, a Nevada limited liability company; TIBAROM NY, LLC, a Nevada limited liability company; TIBAROM PA, LLC, a Nevada limited liability company; TIBAROM CA, LLC, a Nevada limited liability company; PAUL A. MORABITO; EDWARD BAYUK; SALVATORE R. MORABITO; and TREVOR LLOYD,

Plaintiffs,

v.

SHELL OIL PRODUCTS U.S., a foreign corporation; JIFFY LUBE INTERNATIONAL, INC., a foreign corporation; DOES 1-10; and ROE CORPORATIONS A-Z, inclusive,

Defendants.

NOTICE OF REMOVAL

Case No. _____

1 **TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**

2 PLEASE TAKE NOTICE that defendants Pennzoil-Quaker State Company doing
3 business as SOPUS Products (misnamed in the Amended Complaint as "Shell Oil Products
4 U.S.") (hereinafter occasionally referred to as "SOPUS Products"), a corporation incorporated in
5 the State of Delaware with its principal place of business at 700 Milam Street,, in the City of
6 Houston, in the State of Texas, and Jiffy Lube International, Inc. (hereinafter occasionally
7 referred to as "JLI"), a corporation incorporated in the State of Delaware with its principal place
8 of business at 700 Milam Street, in the City of Houston, in the State of Texas ("Defendants"),
9 hereby remove the above-captioned action from the Second Judicial District Court of the State of
10 Nevada, County of Washoe, to the United States District Court for the District of Nevada,
11 pursuant to U.S.C. §§1441 et seq., based upon the following:
12

13
14 1. On or about December 21, 2007, plaintiffs Tibarom NV, Inc., Consolidated
15 Nevada Corporation, Tibarom Holdco, LLC, Tibarom NY LLC, Tibarom PA LLC and Tibarom
16 CA, LLC commenced an action by filing a Complaint (the "Complaint") in the Second Judicial
17 District Court of the State of Nevada, in and for the County of Washoe, entitled TIBAROM NV,
18 INC. a Nevada corporation, CONSOLIDATED NEVADA CORPORATION, TIBAROM
19 HOLDCO, LLC, TIBAROM NY LLC, TIBAROM PA LLC and TIBAROM CA, LLC., plaintiffs
20 v. SHELL OIL PRODUCTS U.S., a foreign corporation, JIFFY LUBE INTERNATIONAL,
21 INC., a foreign corporation, DOES 1-10 and ROE CORPORATIONS A-Z INCLUSIVE
22 [fictitious persons/entities], *Defendants*, Case No. CV-07-02976 (the "Action"). On or about
23 January 7, 2007, plaintiffs Tibarom NV, Inc., Consolidated Nevada Corporation, Tibarom
24 Holdco, LLC, Tibarom NY, LLC, Tibarom PA, LLC, Tibarom CA, LLC, Paul A. Morabito,
25 Edward Baruk, Salvatore R. Morabito and Trevor Lloyd filed an Amended Complaint (the
26 "Amended Complaint") in the Action in the Second Judicial District Court of the State of Nevada,
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1 in and for the County of Washoe, entitled TIBAROM NV, INC., a Nevada corporation;
2 CONSOLIDATED NEVADA CORPORATION, a Nevada corporation; TIBAROM HOLDCO,
3 LLC, a Nevada limited liability company; TIBAROM NY, LLC, a Nevada limited liability
4 company; TIBAROM CA, LLC, a Nevada limited liability company; PAUL A. MORABITO;
5 EDWARD BAYUK; SALVATORE R. MORABITO; and TREVOR LLOYD, plaintiffs, v.
6 SHELL OIL PRODUCTS U.S., a foreign corporation; JIFFY LUBE INTERNATIONAL, INC., a
7 foreign corporation; DOES 1-10; and ROE CORPORATIONS A-Z, inclusive, defendants.

8
9 2. On January 8, 2008, copies of the Summons, the Amended Complaint and the
10 Complaint, were served on The Corporation Trust Company of Nevada ("CT"), the registered
11 agent for service of process in Nevada of both defendants Pennzoil-Quaker State Company doing
12 business as SOPUS Products (misnamed in the Amended Complaint as "Shell Oil Products"
13 U.S.") and defendant Jiffy Lube International, Inc., by delivery to CT's office in Reno, Nevada.
14 Included with the Summons, Complaint and Amended Complaint was an Affirmation pursuant to
15 Nevada Revised Statute 239B.030.

16
17 3. January 8, 2008 was the first date on which defendant SOPUS Products and
18 defendant Jiffy Lube International, Inc. received a copy of the Summons, Amended Complaint or
19 Complaint in the Action, through service or otherwise. Removal of this action is timely under the
20 provisions of 28 U.S.C. § 1446(b) in that less than thirty (30) days have elapsed since defendants
21 Pennzoil-Quaker State Company d/b/a SOPUS Products (misnamed in the Amended Complaint
22 as "Shell Oil Products U.S.") and Jiffy Lube International, Inc. were first served with the
23 Summons, Complaint and Amended Complaint. See *Murphy Bros., Inc. v. Michetti Pipe*
24 *Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

25
26 4. According to the Amended Complaint, and upon information and belief:

27 (a) Plaintiff Tibarom NV, Inc. is a Nevada corporation doing business in Northern
28

1 Nevada. On information and belief, plaintiff Tibarom NV, Inc.'s principal place of business is in
2 the City of Reno, State of Nevada;

3 (b) Plaintiff Consolidated Nevada Corporation is a Nevada corporation with its
4 principal place of business is in the City of Reno, State of Nevada;

5 (c) Plaintiff Consolidated Nevada Corporation is a Nevada corporation with its
6 principal place of business is in the City of Reno, State of Nevada;

7 (d) Plaintiff Tibarom Holdco, LLC is a Nevada limited liability company with its
8 principal place of business in the City of Reno, State of Nevada;

9 (e) Plaintiff Tibarom NY, LLC is a Nevada limited liability company with its
10 principal place of business in the City of Reno, State of Nevada, and at relevant times operated
11 Jiffy Lube franchises in the State of New York;

12 (f) Plaintiff Tibarom PA LLC is a Nevada limited liability company with its principal
13 place of business in the City of Reno, State of Nevada, and at relevant times operated Jiffy Lube
14 franchises in the State of Pennsylvania;

15 (g) Plaintiff Tibarom CA, LLC is a Nevada limited liability company with its principal
16 place of business in the City of Reno, State of Nevada, and at relevant times operated Jiffy Lube
17 franchises in the State of California;

18 (h) Plaintiffs Paul A. Morabito, Edward Bayuk, Salvatore R. Morabito and Trevor
19 Lloyd are all citizens of the State of Nevada and residing in Washoe County, Nevada.

20 5. Defendant Pennzoil-Quaker State Products d/b/a SOPUS Products (misnamed in
21 the Amended Complaint as "Shell Oil Products U.S.") is a corporation incorporated in the State of
22 Delaware with its principal place of business at 700 Milam Street, Houston, Texas.

23 6. Defendant Jiffy Lube International, Inc. is a corporation incorporated in the State
24 of Delaware with its principal place of business at 700 Milam Street, Houston, Texas
25
26
27
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1 7. Plaintiffs have also named as defendants in the Amended Complaint a number of
2 fictitious persons and business entities (DOES 1-10 and ROE CORPORATIONS A-Z .

3 8. Diversity of citizenship existed among all the plaintiffs, on one hand, and
4 defendants Pennzoil-Quaker State Company d/b/a SOPUS Products (misnamed in the Amended
5 Complaint as "Shell Oil Products U.S.") and JLI, on the other hand, when the Amended
6 Complaint was filed on or about January 7, 2008. Diversity of citizenship still exists among the
7 parties plaintiff, on one hand, and the parties defendant, on the other hand, at the time this Notice
8 of Removal is being filed.

9 9. The Amended Complaint includes, *inter alia*, claims that defendants SOPUS
10 Products and JLI (i) breached a JLI franchise agreement by wrongfully restricting plaintiffs' rights
11 to sell their Jiffy Lube franchise stores in Nevada for a purported contract price of
12 \$16,338,244.00, and/or unreasonably refused to approve the sales or transfer of their stores; (ii)
13 breached the implied covenant of good faith and fair dealing, (iii) intentionally interfered with
14 contractual relations; and (iv) fraudulently promised to commit \$10 million to Tibarom NV, Inc.
15 for expansion and fraudulently induced Tibarom to enter into SOPUS Products supply contracts.
16 For these allegedly wrongful acts, plaintiffs seek, *inter alia*, general and special damages,
17 punitive damages and attorneys' fees, and as a result, and upon information and belief, the matter
18 in controversy therefore exceeds \$75,000, exclusive of interest and costs.

19 10. This United States District Court has subject matter jurisdiction over this action
20 pursuant to 28 U.S.C. §1332 because this is a civil action in which there is complete diversity of
21 citizenship between plaintiffs, on one hand, and defendants, on the other hand, and in which the
22 amount in controversy exceeds \$75,000, exclusive of interest and costs.

23 11. Pursuant to 28 U.S.C. §1446(b), this Notice is being filed with this Court within
24 thirty (30) days of defendants Pennzoil-Quaker State Company d/b/a SOPUS Products (misnamed
25

1 in the Amended Complaint as "Shell Oil Products U.S." and JLI's first receipt on January 8, 2008
2 "through service or otherwise, of a copy of the initial pleading setting forth the claim for relief
3 upon which such action or proceeding is based."

4 12. Therefore, this action is removable pursuant to 28 U.S.C. §1441.

5 13. Pursuant to 28 U.S.C. §1446(a), copies of the Summons, Complaint, Amended
6 Complaint and Affirmation pursuant to N.R.S. 239B.030, which constitute all process, pleadings
7 and orders received by defendants Pennzoil-Quaker State Company d/b/a SOPUS Products
8 (misnamed in the Amended Complaint as "Shell Oil Products U.S." and Jiffy Lube International,
9 Inc. or their counsel in this matter, are collectively attached hereto as Exhibit A.
10

11 14. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being
12 submitted for filing with the Clerk of the Second Judicial District Court of the State of Nevada,
13 County of Washoe, and is being served upon plaintiffs' counsel of record.

14 15. In filing this Notice of Removal, defendants Pennzoil-Quaker State Company d/b/a
15 SOPUS Products (misnamed in the Amended Complaint as "Shell Oil Products U.S.") and Jiffy
16 Lube International, Inc. do not waive any defects in service of process, venue, or personal
17 jurisdiction.
18

19 DATED this 29 day of January, 2008.
20

21 Nancy L. Alf #128
22 Nancy L. Alf, Esq. SBN 3785
23 GONZALEZ SAGGIO & HARLAN
411 E. Bonneville Ave., Suite 100
Las Vegas, Nevada 89101

24 AND

25 Steven Gerber
26 ADORNO & YOSS LLP
155 Willowbrook Boulevard, Suite 300
27 Wayne, New Jersey 07470-7038

28 ADORNO YOSS ALVARDO & SMITH

John M. Sorich
1 MacArthur Place, Suite 200
Santa Ana, CA 92707
Attorneys for PENNZOIL-QUAKER
STATE COMPANY d/b/a SOPUS
PRODUCTS (Misnamed in the Amended
Complaint as "SHELL OIL PRODUCTS
U.S.") AND JIFFY LUBE
INTERNATIONAL, INC.

CERTIFICATE OF SERVICE

I do hereby certify under penalty of perjury that I did serve a copy of NOTICE OF
REMOVAL upon the parties listed below by facsimile and by United States mail, first class
postage fully prepaid on this 30 day of January, 2008.

775-823-2929
Leif E. Reid, Esq.
Bruce T. Beesley, Esq.
Caryn S. Tijsseling, Esq.
Lewis And Roca, LLP
Bank of America Plaza
50 W. Liberty Street, Ste. 410
Reno, NV 89501



An employee of Gonzalez Saggio & Harlan, LLP

EXHIBIT A

2008-0016

CT CORPORATION

A WoltersKluwer Company

**Service of Process
Transmittal**

01/08/2008

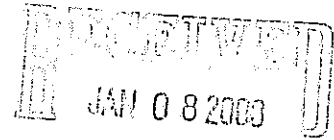
CT Log Number 512956453



TO: Diane G Bowman, Legal Assistant
Shell Oil Company
One Shell Plaza, 910 Louisiana St., Room 4873
Houston, TX 77002-

RE: Process Served in Nevada

FOR: Shell Oil Products US (Assumed Name) (Domestic State: DE)
Equilon Enterprises LLC (True Name)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

TITLE OF ACTION: Tibarom NV, Inc., et al., Pltfs. vs. Shell Oil Products U.S., etc., et al., Dfts.

DOCUMENT(S) SERVED: Summons, Affidavit of Service form, Affirmation, Complaint, Amended Complaint

COURT/AGENCY: Second Judicial District Court of Washoe County, NV
Case # CV07-02976

NATURE OF ACTION: Seeks damages in excess of \$10,000, etc. for breach of contract on or about march 24, 2004, re JLI Franchises

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company of Nevada, Reno, NV

DATE AND HOUR OF SERVICE: By Process Server on 01/08/2008 at 11:35

APPEARANCE OR ANSWER DUE: Within 20 days, exclusive of day of service

ATTORNEY(S) / SENDER(S): Caryn S. Tijsseling
Lewis and Roca LLP
Bank of America Plaza
50 W. Liberty Street
Suite 410
Reno, NV 89501
775-823-2900

ACTION ITEMS: CT has retained the current log, Retain Date: 01/08/2008, Expected Purge Date: 01/13/2008
Image SOP - Page(s): 20
Email Notification, Diane G Bowman DIANE.BOWMAN@SHELL.COM
Email Notification, Simon Bolanos simon.bolanos@shell.com

SIGNED: The Corporation Trust Company of Nevada

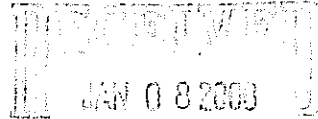
ADDRESS: 6100 Neil Road
Suite 500
Reno, NV 89511

TELEPHONE: 775-688-3061

Page 1 of 1 / AM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

CODE 4085



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

TIBAROM NV, INC et al

Plaintiff(s),

vs.

SHELL OIL PRODUCTS U.S.

Defendant(s).

Case No.

CV07 02976

Dept. No.

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: Breach of Contract

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:
 - a. File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
 - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 21st day of December

20 007
HOWARD W. CONYERS

Issued on behalf of Plaintiff(s):

~~RONALD A. LONGTIN, JR.~~
CLERK OF THE COURT

Name: Leif Reid # 5750Address: Lewis and Roca, LLP50 W. Liberty Ste. 410 Reno, NV 89501Phone Number: 775-823-2900

By: J. Sheets
Deputy Clerk

Second Judicial District Court
75 Court Street
Reno, Nevada 89501

AFFIDAVIT OF SERVICE

STATE OF _____)
COUNTY OF _____) ss.

I, _____, being first duly sworn, deposes and says:
That affiant is a citizen of the United States, over 18 years of age, and that affiant received the
within Summons on the _____ day of _____, 20____, and personally served
a copy of the same upon _____ on the
_____ day of _____, 20____.

Subscribed and sworn to before me this

Signature of Person Making Service

_____ day of _____, 20____.

Notary Public

AFFIDAVIT OF MAILING

(For use when service is by publication and mailing)

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

I, _____, being first duly sworn, deposes and says:

That on the _____ day of _____, 20____, affiant deposited in the United
States Mail at Reno, Nevada, a copy of the within Summons and Complaint or Petition addressed
to: _____

Subscribed and sworn to before me this

Signature of Person Who Mailed Document(s)

_____ day of _____, 20____.

Notary Public

Note: If service is made in any manner by NRCP Rule 4, other than personally upon the defendant,
or is made outside the United States, a special affidavit or return must be made.

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Summons

(Title of Document)

filed in case number: _____

☐ Document does not contain the social security number of any person

-OR-

☒ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: December 21, 2007

Caryn Tjsseling
(Signature)

Caryn Tjsseling
(Print Name)

Tibarom NV, Inc et al
(Attorney for)

2008-0016

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

01/08/2008

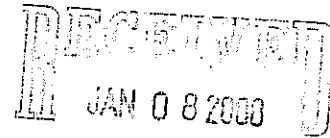
CT Log Number 512956625



TO: Diane G Bowman, Legal Assistant
Shell Oil Company
One Shell Plaza, 910 Louisiana St., Room 4873
Houston, TX 77002-

RE: Process Served in Nevada

FOR: JIFFY LUBE INTERNATIONAL, INC. (Domestic State: DE)



ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Tibarom NV, Inc., et al., Pltfs. vs. Shell Oil Products U.S., etc., et al., including Jiffy Lube International, Inc., etc., Dfts.

DOCUMENT(S) SERVED: Summons, Affidavit of Service form, Affirmation, Complaint, Amended Complaint

COURT/AGENCY: Second Judicial District Court of Washoe County, NV
Case # CV07-02976

NATURE OF ACTION: Seeks damages in excess of \$10,000, etc. for breach of contract on or about march 24, 2004, re JLI Franchises

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company of Nevada, Reno, NV

DATE AND HOUR OF SERVICE: By Process Server on 01/08/2008 at 11:35

APPEARANCE OR ANSWER DUE: Within 20 days, exclusive of day of service

ATTORNEY(S) / SENDER(S): Caryn S. Tijsseling
Lewis and Roca LLP
Bank of America Plaza
50 W. Liberty Street
Suite 410
Reno, NV 89501
775-823-2900

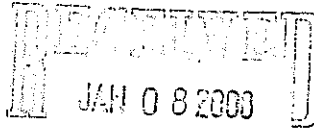
ACTION ITEMS: CT has retained the current log, Retain Date: 01/08/2008, Expected Purge Date: 01/13/2008
Image SOP - Page(s): 20
Email Notification, Diane G Bowman DIANE.BOWMAN@SHELL.COM
Email Notification, Simon Bolanos simon.bolanos@shell.com

SIGNED: The Corporation Trust Company of Nevada

ADDRESS: 6100 Neil Road
Suite 500
Reno, NV 89511

TELEPHONE: 775-688-3061

CODE 4085

11:35
1-808

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

TIBAROM NV, INC et al

Plaintiff(s),

vs.

JIFFY LUBE INTERNATIONAL, INC.

Defendant(s).

Case No. CV07 02976

Dept. No. 1

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: Breach of Contract

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:

- File with the Clerk of the Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
- Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 21st day of December, 2007.

Issued on behalf of Plaintiff(s):

HOWARD W. CONYERS
RONALD A. LONGTIN, JR.
CLERK OF THE COURT
J. Sheets

Name: Leif Reid # 5750

Address: Lewis and Roca, LLP

50 W. Liberty Ste. 410 Reno, NV 89501

Phone Number: 775-823-2900

By: _____
Deputy Clerk

Second Judicial District Court
75 Court Street
Reno, Nevada 89501

AFFIDAVIT OF SERVICE

STATE OF _____)

COUNTY OF _____) ss.

I, _____, being first duly sworn, deposes and says:

That affiant is a citizen of the United States, over 18 years of age, and that affiant received the within Summons on the _____ day of _____, 20____, and personally served a copy of the same upon _____ on the _____ day of _____, 20____.

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature of Person Making Service

Notary Public

AFFIDAVIT OF MAILING

(For use when service is by publication and mailing)

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

I, _____, being first duly sworn, deposes and says:

That on the _____ day of _____, 20____, affiant deposited in the United States Mail at Reno, Nevada, a copy of the within Summons and Complaint or Petition addressed to: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature of Person Who Mailed Document(s)

Notary Public

Note: If service is made in any manner by NRCP Rule 4, other than personally upon the defendant, or is made outside the United States, a special affidavit or return must be made.

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Summons

(Title of Document)

filed in case number: _____

☐ Document does not contain the social security number of any person

-OR-

☒ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: December 21, 2007

Caryn Tijsseling
(Signature)

Caryn Tijsseling
(Print Name)

Tibbom Inc., et al
(Attorney for)

Code: S1425

LEIF E. REID (NV Bar No. 5750)

CARYN S. TIJSSELING (NV Bar No. 6521)

LEWIS AND ROCA LLP

Bank of America Plaza

50 W. Liberty Street, Ste. 410

Reno, Nevada 89501

Telephone: (775) 823-2900

Facsimile: (775) 823-2929

Attorneys for Plaintiff

FILED

2007 DEC 21 PM 3:58

HOWARD W. CONYERS

BY J. Sheets
DEPUTY

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

TIBAROM NV, INC., a Nevada
corporation, CONSOLIDATED NEVADA
CORPORATION, TIBAROM HOLDCO, LLC,
TIBAROM NY LLC, and TIBAROM PA LLC
and TIBAROM CA, LLC

Plaintiffs,

vs.

SHELL OIL PRODUCTS U.S., a foreign
corporation and JIFFY LUBE
INTERNATIONAL, INC., a foreign corporation
and DOES 1-10; and ROE CORPORATIONS A-
Z, inclusive,

Defendants.

Case No. **CV07 02976**

Dept. No. 1

RECEIVED
JAN 08 2008

COMPLAINT

COMES NOW, Tibarom NV, Inc., a Nevada corporation, by and through its counsel, the law firm of Lewis and Roca LLP, hereby complains of Defendants JLI, as follows:

1. Tibarom NV, Inc., (hereafter "Tibarom"), is a Nevada corporation doing business in Northern Nevada and duly organized and existing under the laws of the State of Nevada. Consolidated Nevada Corporation (hereafter "CoNevadaCo") is a Nevada corporation organized and existing under the laws of the State of Nevada. Tibarom Holdco, LLC (hereafter Tib Holdco) is a Nevada corporation duly organized and existing under the laws of the State of Nevada. Tibarom NY LLC, (hereafter "Tib NY") is a Nevada Corporation duly organized and existing under the laws of the State

1 of Nevada and operating Jiffy Lube franchises in the State of New York; Tibarom PA LLC (hereafter
 2 "Tib PA") is a Nevada corporation duly organized and existing under the laws of the State of Nevada
 3 and operating Jiffy Lube franchises in the State of Pennsylvania. Tibarom CA, LLC ("Tib CA") is
 4 Nevada corporation duly organized and existing under the laws of the State of Nevada and operating
 5 Jiffy Lube franchises in the State of California.

6
 7 2. Paul Morabito, Edward Bayuk, Salvatore R. Morabito and Trevor Lloyd are
 8 individuals residing in the state of Nevada and the Shareholders of the parent company of Tibarom.

9 3. Defendant JLI International, Inc., (hereafter "JLI"), is a foreign corporation doing
 10 business in Washoe County, Nevada.

11 4. Shell Oil Products U.S. (hereafter "SOPUS"), is a foreign corporation doing business
 12 in Washoe County, Nevada.

13 5. Plaintiffs do not know the true names and capacities of Defendants sued herein as
 14 DOES 1-10, inclusive, and therefore sue these Defendants by fictitious names. Plaintiffs are informed
 15 and believe, and thereon allege, that each of these fictitiously named Defendants are responsible in
 16 some actionable manner for the matters alleged herein. Plaintiffs will amend this Complaint when the
 17 true names and capacities of such Defendants are ascertained.

18 GENERAL ALLEGATIONS

19
 20 6. SOPUS is the parent company of JLI.

21 7. Since 1999, Tibarom and related entities have owned and operated many JLI franchise
 22 locations throughout northern Nevada, New York, Pennsylvania, and California. The Parties'
 23 respective obligations are governed by JLI Franchise Agreements.

24 8. On or about December 23, 2003, JLI entered into an SOPUS Products Repayment and
 25 Sales Agreement ("Product Agreement"). Pursuant to the terms of the Product Agreement, JLI agreed
 26 to purchase certain minimum amounts of Quaker State products in the JLI Franchise facilities.

27 9. Tibarom's franchise agreements with JLI prevent Tibarom from selling, assigning or
 28 otherwise transferring ownership of the franchises without the prior written consent of JLI.

1 10. On or about May 28, 2004, Steve Hirst, the President of Shell's Northern American
2 lubricant unit, committed SOPUS to extend up to \$10 million in financing to permit the Plaintiffs to
3 develop additional franchise locations for JLI. This financing would, in turn, allow SOPUS the benefit
4 of obtaining additional Oil Supply Agreements for these locations.

5 11. On or about April 30, 2004, Hirst sent a letter to Morabito and Tibarom, NV, Inc.,
6 committing SOPUS to the \$10 million in financing. SOPUS's promise to extend \$10 million in
7 financing additional franchises induced Plaintiffs to enter into its existing Oil Supply Agreements with
8 SOPUS.

9 12. SOPUS reneged on its commitments to provide the promised financing.

10 13. In or about early 2005, Plaintiffs and SOPUS had a series of disagreements about its
11 existing oil contracts and the unwillingness of SOPUS to address product and price irregularities.

12 14. In or about May of 2006, SOPUS proposed a resolution to the disagreements between
13 Plaintiffs and SOPUS that would eliminate 2,443,777 units from the current SOPUS supply contracts
14 at an approximate average value of \$.25 per unit funded, or \$610,944.25.

15 15. Through this same agreement, SOPUS agreed to forgive all past unit shortfalls that
16 were due, a sum of approximately \$156,153.22.

17 16. In or about October 2006, Tibarom sought approval to transfer certain JLI franchises in
18 the Reno, Nevada area held by them to ETT Lubes, LLC.

19 17. Berry Hinckley Industries, Inc., the parent of Tibarom, had an agreement to sell certain
20 JLI stores held by Tibarom, NV, Inc., to ETT Lubes LLC.

21 18. The principals of ETT Lubes are Ed, Tim and Troy Herbst (collectively "the Herbsts").

22 19. The Herbsts' father, Jerry Herbst, owns 100% of Terrible Herbst, Inc., and Ed, Tim and
23 Troy are officers and directors of Terrible Herbst.

24 20. Terrible Herbst owns approximately 100 convenience stores/gas stations in Southern
25 Nevada.

1 21. Terrible's locations range from stand-alone convenience stores to carwash, gas station,
2 and lube center combinations.

3 22. Terribles does not operate any lube stores in the counties in northern Nevada where
4 Plaintiff Tib NV operates its JLI stores.

5 23. Terribles' lube stores in southern Nevada compete with other JLI stores owned by
6 other franchisees. Terrible's lube stores do not compete with Plaintiff's JLI stores in northern Nevada.

7 24. ETT Lubes was prepared to acquire the stores from Plaintiff Tib NV for
8 \$16,338,244.00, and had executed a contract to complete this sale.

9 25. When Plaintiff requested that JLI consent to this transfer, JLI expressed concern that
10 the principals of ETT Lubes were officers and directors of Terribles and would someday inherit the
11 Terribles stores from their father.

12 26. JLI unreasonably withheld its consent to the ETT Lubes transaction. JLI would not
13 consent to this transaction because SOPUS would not allow it to do so. SOPUS required JLI to
14 withhold consent based upon the pre-text of the non-compete provision contained in the JLI Franchise
15 Agreement.

16 27. Plaintiff is informed and believes that ETT Lubes was willing to accept certain
17 conditions on the transfer. SOPUS, however, imposed upon JLI additional conditions that were
18 designed to make the transaction less appealing to the principals of ETT Lubes, including a
19 requirement that ETT Lubes agree in advance to divest its JLI stores in the event that ETT Lube's
20 principal, Jerry Herbst, were to pass away in the future and leave his chain of Las Vegas based
21 quicklubes to his three sons.

22 28. ETT Lubes refused to accept these conditions and the sale was not consummated.

23 29. JLI's speculation about potential future competition by ETT Lubes' principals was not
24 a proper basis to disapprove the transfer of the northern Nevada JLI franchises.

1 30. In or about August 2007, other third parties were negotiating directly with JLI for the
2 purchase of Plaintiff's franchises. SOPUS/JLI have unreasonably refused to approve these sales,
3 including sales to existing and former JLI franchisees.

4 31. Plaintiffs are informed and believes that SOPUS/JLI will not communicate with any
5 potential buyers of Plaintiffs' franchises.

6
7 **FIRST CLAIM FOR RELIEF**
8 (Breach of Contract)

9 31. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through
10 40 herein as though the same were again set forth verbatim.

11 32. On or about March 24, 2004, the parties entered into a Franchise Agreement.

12 33. Tibarom performed as required under that contract.

13 34. JLI has breached that contract by wrongfully restricting Plaintiffs' rights to sell their
14 JLI Franchises.

15 45. As a result, Plaintiffs have suffered damages in excess of \$10,000.00.

16 **SECOND CLAIM FOR RELIEF**
17 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

18 46. Tibarom realleges and incorporates by reference the allegations of paragraphs 1
19 through 45 herein as though the same were again set forth verbatim.

20 47. The Plaintiffs entered into Franchise Agreements with JLI. The Plaintiffs have also
21 entered into Oil Supply Agreements with SOPUS.

22 48. SOPUS /JLI owed a duty of good faith to Tibarom.

23 49. SOPUS /JLI breached its duty of good faith by performing in a manner that was
24 unfaithful to the purpose of the contract by unreasonably withholding consent to the sale of the
25 franchises by Plaintiffs and in imposing unreasonable conditions on the sale of the franchises.

26 50. As a result, Plaintiffs' justified expectations were denied.

27 51. Plaintiffs have been required to retain counsel to bring these claims and is entitled to
28 reasonable attorneys' fees and costs.

2 THIRD CLAIM FOR RELIEF
3 (Intentional Interference with Contractual R

(Intentional Interference with Contractual Relations)

6 54. Tibarom had entered into contracts to sell its JLI franchises to qualified buyers.

56. SOPUS placed unreasonable conditions and withheld consent to the sale of the Plaintiffs' JLI franchises with the intent to prevent the sale of Plaintiffs' JLI franchises.

58. SOPUS withheld consent and made unreasonable conditions for the sale of the franchises with the conscious desire to prevent the transaction from occurring.

FOURTH CLAIM FOR RELIEF
(Fraudulent Inducement)

(Fraudulent Inducement)

61. By fraudulently promising to commit \$10 million to Tibarom's expansion, SOPUS /JLI induced Tibarom entered into the SOPUS supply contracts.

63. SOPUS /JLI intended to induce Tibarom to enter into the supply contracts by making the \$10 million financing commitment.

65. Tibarom has been damaged by the failure of SOPUS /JLI to fulfill its' commitment to Tibarom.

66. Tibarom has been damaged in an amount to be proven at trial but greater than \$10,000.00

67. Tibarom has been required to retain counsel to pursue this action against SOPUS /JLI and is therefore entitled to reasonable attorneys' fees and costs incurred herein.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of the them as follows:

1. For general and special damages in excess of \$10,000.00;
2. For reasonable attorneys fees incurred in this action;
3. For costs of suit incurred herein;
4. For punitive damages; and
5. For such other and further relief as the court may deem just and proper.

RESPECTFULLY SUBMITTED this 21st day of December, 2007.

BECKLEY SINGLETON, CHTD.

By:

Caryn Tijsseling
LEIF E. REID, ESQ.
CARYN S. TIJSSELING, ESQ.

Attorneys for Plaintiff

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Complaint

(Title of Document)

filed in case number: _____



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: December 21, 2007

Carin Tijsseling
(Signature)

Carin Tijsseling
(Print Name)

Tibaron NV, et. al.
(Attorney for)

Code: 1090

LEIF E. REID (NV Bar No. 5750)

BRUCE T. BEESLEY (NV Bar No. 1164)

CARYN S. TUSSELING (NV Bar No. 6521)

LEWIS AND ROCA LLP

Bank of America Plaza

50 W. Liberty Street, Ste. 410

Reno, Nevada 89501

Telephone: (775) 823-2900

Facsimile: (775) 823-2929

Attorneys for Plaintiff

FILED

2008 JAN -7 PM 3:11

HOWARD W. CONYERS

BY D. Jaramillo

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

TIBAROM NV, INC., a Nevada corporation;
CONSOLIDATED NEVADA CORPORATION,
a Nevada corporation; TIBAROM HOLDCO,
LLC, a Nevada limited liability company;
TIBAROM NY, LLC, a Nevada limited liability
company; TIBAROM PA, LLC, a Nevada
limited liability company; TIBAROM CA, LLC,
a Nevada limited liability company; PAUL A.
MORABITO; EDWARD BAYUK;
SALVATORE R. MORABITO; and TREVOR
LLOYD,

Plaintiffs,

vs.

SHELL OIL PRODUCTS U.S., a foreign
corporation; JIFFY LUBE INTERNATIONAL,
INC., a foreign corporation; DOES 1-10; and
ROE CORPORATIONS A-Z, inclusive,

Defendants.

Case No. CV07-02976

Dept. No. 1

AMENDED COMPLAINT

RECEIVED
JAN 08 2008

COMPLAINT

COMES NOW, Tibarom NV, Inc., a Nevada corporation, Tibarom NV, Inc., a Nevada corporation; Consolidated Nevada Corporation, a Nevada corporation; Tibarom HoldCo, LLC, a Nevada limited liability company; Tibarom NY, LLC, a Nevada limited liability company; Tibarom, PA LLC, a Nevada limited liability company; Tibarom CA, LLC, a Nevada limited liability company; Paul A. Morabito; Edward Bayuk; Salvatore R. Morabito; and Trevor Lloyd, (collectively, "Plaintiffs") by and through its counsel, the law firm of Lewis and Roca LLP, hereby complains of

1 Defendants Jiffy Lube International, Inc., a foreign corporation and Shell Oil Products U.S., a foreign
2 corporation (together, "Defendants") as follows:

3 1. Tibarom NV, Inc., (hereafter "Tibarom"), is a Nevada corporation doing business in
4 Northern Nevada and duly organized and existing under the laws of the State of Nevada. Consolidated
5 Nevada Corporation (hereafter "CoNevadaCo") is a Nevada corporation organized and existing under
6 the laws of the State of Nevada. Tibarom Holdco, LLC (hereafter Tib Holdco) is a Nevada limited
7 liability company duly organized and existing under the laws of the State of Nevada. Tibarom NY,
8 LLC, (hereafter "Tib NY") is a Nevada limited liability company duly organized and existing under
9 the laws of the State of Nevada and operating Jiffy Lube franchises in the State of New York.
10 Tibarom, PA LLC (hereafter "Tib PA") is a Nevada limited liability company duly organized and
11 existing under the laws of the State of Nevada and operating Jiffy Lube franchises in the State of
12 Pennsylvania. Tibarom CA, LLC ("Tib CA") is Nevada limited liability company duly organized and
13 existing under the laws of the State of Nevada and operating Jiffy Lube franchises in the State of
14 California.

15 2. Plaintiff Paul Morabito ("Morabito") is an individual residing in Washoe County,
16 Nevada and a shareholder of the parent company of Tibarom.

17 3. Plaintiff Edward Bayuk is an individual residing in Washoe County, Nevada and a
18 shareholder of the parent company of Tibarom.

19 4. Plaintiff Salvatore R. Morabito is an individual residing in Washoe County, Nevada
20 and a shareholder of the parent company of Tibarom.

21 5. Plaintiff Trevor Lloyd is an individual residing in Washoe County, Nevada and a
22 shareholder of the parent company of Tibarom.

23 6. Defendant Jiffy Lube International, Inc., (hereafter "JLI"), is a foreign corporation
24 doing business in Washoe County, Nevada.

25 7. Shell Oil Products U.S. (hereafter "SOPUS"), is a foreign corporation doing business
26 in Washoe County, Nevada.
27
28

1 8. Plaintiffs do not know the true names and capacities of Defendants sued herein as
2 DOES 1-10, inclusive, and therefore sue these Defendants by fictitious names. Plaintiffs are informed
3 and believe, and thereon allege, that each of these fictitiously named Defendants are responsible in
4 some actionable manner for the matters alleged herein. Plaintiffs will amend this Complaint when the
5 true names and capacities of such Defendants are ascertained.
6

7 GENERAL ALLEGATIONS

8 9. SOPUS is the parent company of JLI.

9 10. Since 1999, Tibarom and related entities have owned and operated many JLI franchise
10 locations throughout Northern Nevada, New York, Pennsylvania, and California. The parties'
11 respective obligations are governed by JLI Franchise Agreements.

12 11. On or about December 23, 2003, JLI entered into an SOPUS Products Repayment and
13 Sales Agreement ("Product Agreement"). Pursuant to the terms of the Product Agreement, JLI agreed
14 to purchase certain minimum amounts of Quaker State products in the JLI Franchise facilities.

15 12. Tibarom's franchise agreements with JLI prevent Tibarom from selling, assigning or
16 otherwise transferring ownership of the franchises without the prior written consent of JLI.
17

18 13. On or about May 28, 2004, Steve Hirst, the President of Shell's Northern American
19 lubricant unit, committed SOPUS to extend up to \$10 million in financing to permit the Plaintiffs to
20 develop additional franchise locations for JLI. This financing would, in turn, allow SOPUS the benefit
21 of obtaining additional Oil Supply Agreements for these locations.

22 14. On or about April 30, 2004, Hirst sent a letter to Morabito and Tibarom committing
23 SOPUS to the \$10 million in financing. SOPUS's promise to extend \$10 million in financing
24 additional franchises induced Plaintiffs to enter into its existing Oil Supply Agreements with SOPUS.

25 15. SOPUS reneged on its commitments to provide the promised financing.

26 16. In or about early 2005, Plaintiffs and SOPUS had a series of disagreements about its
27 existing oil contracts and the unwillingness of SOPUS to address product and price irregularities.
28

1 17. In or about May of 2006, SOPUS proposed a resolution to the disagreements between
2 Plaintiffs and SOPUS that would eliminate 2,443,777 units from the current SOPUS supply contracts
3 at an approximate average value of \$.25 per unit funded, or \$610,944.25.

4 18. Through this same agreement, SOPUS agreed to forgive all past unit shortfalls that
5 were due, a sum of approximately \$156,153.22.

6 19. In or about October 2006, Tibarom sought approval to transfer certain JLI franchises in
7 the Reno, Nevada area held by them to ETT Lubes, LLC ("ETT Lubes").

8 20. Berry Hinckley Industries, Inc., the parent of Tibarom, had an agreement to sell certain
9 JLI stores held by Tibarom to ETT Lubes.

10 21. The principals of ETT Lubes are Ed, Tim and Troy Herbst (collectively, the
11 "Herbsts").

12 22. The Herbsts' father, Jerry Herbst, owns 100% of Terrible Herbst, Inc., ("Terrible
13 Herbst") and Ed, Tim and Troy are officers and directors of Terrible Herbst.

14 23. Terrible Herbst owns approximately 100 convenience stores/gas stations in Southern
15 Nevada.

16 24. Terrible Herbst's locations range from stand-alone convenience stores to carwash, gas
17 station, and lube center combinations.

18 25. Terrible Herbst does not operate any lube stores in the counties in Northern Nevada
19 where Plaintiff Tib NV operates its JLI stores.

20 26. Terrible Herbst's lube stores in Southern Nevada compete with other JLI stores owned
21 by other franchisees. Terrible Herbst's lube stores do not compete with Plaintiff's JLI stores in
22 Northern Nevada.

23 27. ETT Lubes was prepared to acquire the stores from Plaintiff Tib NV for
24 \$16,338,244.00, and had executed a contract to complete this sale.

1 28. When Plaintiff requested that JLI consent to this transfer, JLI expressed concern that
2 the principals of ETT Lubes were officers and directors of Terrible Herbst and would someday inherit
3 the Terrible Herbst stores from their father.

4 29. JLI unreasonably withheld its consent to the ETT Lubes transaction. JLI would not
5 consent to this transaction because SOPUS would not allow it to do so. SOPUS required JLI to
6 withhold consent based upon the pre-text of the non-compete provision contained in the JLI Franchise
7 Agreement.

8 30. Plaintiff is informed and believes that ETT Lubes was willing to accept certain
9 conditions on the transfer. SOPUS, however, imposed upon JLI additional conditions that were
10 designed to make the transaction less appealing to the principals of ETT Lubes, including a
11 requirement that ETT Lubes agree in advance to divest its JLI stores in the event that ETT Lube's
12 principal, Jerry Herbst, were to pass away in the future and leave his chain of Las Vegas based
13 quicklubes to his three sons.
14

15 31. ETT Lubes refused to accept these conditions and the sale was not consummated.

16 32. JLI's speculation about potential future competition by ETT Lubes' principals was not
17 a proper basis to disapprove the transfer of the Northern Nevada JLI franchises.
18

19 33. In or about August 2007, other third parties were negotiating directly with JLI for the
20 purchase of Plaintiff's franchises. SOPUS/JLI have unreasonably refused to approve these sales,
21 including sales to existing and former JLI franchisees.

22 34. Plaintiffs are informed and believes that SOPUS/JLI will not communicate with any
23 potential buyers of Plaintiffs' franchises.

24 **FIRST CLAIM FOR RELIEF**
25 **(Breach of Contract)**

26 35. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through
27 34 herein as though the same were again set forth verbatim.

28 36. On or about March 24, 2004, the parties entered into a Franchise Agreement.

1 37. Tibarom performed as required under that contract.

2 38. JLI has breached that contract by wrongfully restricting Plaintiffs' rights to sell their
3 JLI franchises.

4 39. As a result, Plaintiffs have suffered damages in excess of \$10,000.00.

5 **SECOND CLAIM FOR RELIEF**

6 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

7 40. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through
8 39 herein as though the same were again set forth verbatim.

9 41. Plaintiffs entered into Franchise Agreements with JLI. The Plaintiffs have also entered
10 into Oil Supply Agreements with SOPUS.

11 42. SOPUS /JLI owed a duty of good faith to Plaintiffs.

12 43. SOPUS /JLI breached its duty of good faith by performing in a manner that was
13 unfaithful to the purpose of the contract by unreasonably withholding consent to the sale of the
14 franchises by Plaintiffs and in imposing unreasonable conditions on the sale of the franchises.

15 44. As a result, Plaintiffs' justified expectations were denied.

16 45. Plaintiffs have been required to retain counsel to bring these claims and is entitled to
17 reasonable attorneys' fees and costs.

18 46. As a result, Plaintiffs have suffered damages in excess of \$10,000.00.

19 **THIRD CLAIM FOR RELIEF**

20 (Intentional Interference with Contractual Relations)

21 47. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through
22 46 herein as though the same were set forth verbatim.

23 48. Plaintiffs had entered into contracts to sell its JLI franchises to qualified buyers.

24 49. SOPUS knew of the contractual relationship between Tibarom and Herbsts.

25 50. SOPUS placed unreasonable conditions and withheld consent to the sale of the
26 Plaintiffs' JLI franchises with the intent to prevent the sale of Plaintiffs' JLI franchises.
27
28

51. SOPUS knew that the transaction between Plaintiffs and the buyers of their franchises were certain or substantially certain to occur.

52. SOPUS withheld consent and made unreasonable conditions for the sale of the franchises with the conscious desire to prevent the transaction from occurring.

53. Plaintiffs suffered actual harm as a result of the interference with the potential contractual relationship in an amount to be established at the time of trial but greater than ten thousand dollars (\$10,000.00).

FOURTH CLAIM FOR RELIEF
(Fraudulent Inducement)

54. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53 herein as though the same were set forth verbatim.

55. By fraudulently promising to commit \$10 million to Tibarom's expansion, SOPUS /JLI induced Tibarom to enter into the SOPUS supply contracts.

56. SOPUS /JLI knew the promise to commit \$10 million to Tibarom was false or that there was an insufficient basis for making such a commitment at the time the representation was made.

57. SOPUS /JLI intended to induce Tibarom to enter into the supply contracts by making the \$10 million financing commitment.

58. Plaintiffs justifiably relied upon that fraudulent commitment in entering into the supply contracts.

59. Plaintiffs were damaged by the failure of SOPUS /JLI to fulfill its' commitment to Tibarom.

60. Plaintiffs were damaged in an amount to be proven at trial but greater than \$10,000.00

61. Plaintiffs were required to retain counsel to pursue this action against SOPUS /JLI and are therefore entitled to reasonable attorneys' fees and costs incurred herein.

WHEREFORE, Plaintiffs pray for judgment against Defendants against each of them as follows:

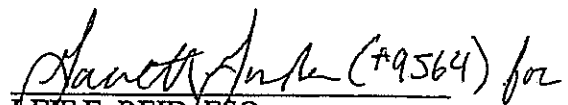
1. For general and special damages in excess of \$10,000.00;
2. For reasonable attorneys fees incurred in this action;
3. For costs of suit incurred herein;
4. For punitive damages; and
5. For such other and further relief as the court may deem just and proper.

The undersigned hereby affirms that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 7th day of January, 2008.

LEWIS AND ROCA LLP

By:

 (+9564) for
LEIF E. REID, ESQ.
BRUCE T. BEESLEY, ESQ.
CARYN S. TIJSELING, ESQ.

Attorneys for Plaintiff